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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
Corner George and Alice Streets
BRISBANE QLD 4000

Submission No. 56

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STATE DEVELOPMENT, INFRASTRUCTURE
AND INDUSTRY COMMITTEE

Dear Sir/Madam

NPAQ Submission to State Development, Infrastructure and Industry
Committee on Sustainable Planning and Other Legislation
Amendment Bill 2012

The National Parks Association of Queensland (NPAQ) promotes the preservation, expansion and good management of National Parks and the wider protected area estate in Queensland.

NPAQ has several concerns about the proposal to introduce a Sustainable Planning and Other Legislation Amendment Bill 2012, in particular that the Bill will:

- Deny all but the most wealthy the ability to take legitimate cases before the Queensland Planning and Environment Court (QPEC), through fear of crippling costs orders.
- Tip the scales of negotiation and dispute resolution in favour of large Councils and developers who can afford the risk of going to trial.
- With negligible consultation, overturn a 20+ year rule which has served an important public interest of community involvement in planning decisions which affect everyone.

NPAQ is also concerned that the Bill will not:

- Reduce appeals by commercial competitors which have too much to gain to be dissuaded from "delay and obstruct" tactics, and are already at risk of costs orders.
- Reduce appeals that lack reasonable planning grounds as they are already rare and subject to the risk of costs orders.
- Improve early resolution of appeals which are already resolved 95% of the time before trial.
- Meaningfully improve development assessment, as less than 0.1% of development applications are delayed by third party trials.



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In addition:

1. Consultation with stakeholders prior to the Bill's introduction was inadequate, considering the importance of the proposed change. It appears that no rural or landholder groups were consulted as key stakeholders, even though the changes to the costs rules would make it harder for such groups to use QPEC.
2. QPEC, unlike commercial courts, hears planning and environmental matters that affect the whole community and future generations of Queenslanders. Examples of those matters include protection of heritage sites, survival of endangered species and protecting landholders from neighbouring developments such as mines and quarries.
3. The current rule that each party to proceedings in the Court bears its own costs, subject to limited exceptions, has been in place for over 20 years. All parties must pay for their own legal assistance or expert witnesses and volunteer their own time but, apart from limited exceptions, the parties do not currently have to pay the other side's costs if they lose.
4. This *own costs* rule serves the important public interest of enabling ordinary citizens or groups to dispute planning decisions, or to seek to protect the environment, without fear of crippling costs orders. It also protects local governments and State agencies from the risk of such costs.
5. Individuals will now not dare go to Court, for fear of losing their house or property.
6. There are already protections in place to prevent abuse of this system, with the Court having power to award costs in circumstances where cases are frivolous, or vexatious, or instituted primarily to delay or obstruct, or if there is a delay in meeting the Court timetable.
7. There is no evidence of widespread problems with this *own costs* system with less than 0.1% of development applications being taken to trial by 3rd party appellants. The Court is internationally recognised for case management that sees 95% of matters resolved prior to trial.
8. The proposed change to costs following the event will disadvantage poor and middle-income people, mums and dads, non-profit community and non-profit environmental groups. They won't be able to risk crippling costs orders or risk losing their house or their group even if they have a good legal case and even if they represent many people in the community concerned about a development proposal or seeking to stop illegal activity.



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9. Contrary to the stated justifications for the proposed change to the cost rule the change won't discourage large commercial competitors, e.g. developers of major shopping centres, if they have lots to gain from instituting proceedings. There is no evidence of a large number of unmeritorious appeals in the Court which has a similar rate of unsuccessful matters as those courts where costs follow the event.
10. Even if the change did assist in the stated justification, it would have the unintended consequence of creating a barrier to ordinary citizens from raising valid planning and environmental issues in the QPEC. It would also make local governments and State agencies unwilling to go to Court to protect the public interest.

After careful thought and analysis, we consider that the current costs rule is best left alone; overall it has worked well, and there are no compelling reasons to change it. NPAQ therefore recommends deleting Clause 61 of the Bill to retain the current costs rule.

Yours sincerely

Paul Donatiu
NPAQ Executive Coordinator